

## **CHAPTER VII**

### **SPECIAL DEVELOPMENT REGULATIONS**

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- §7.1 – MOBILE HOME PARKS**
  - §7.2 – TELECOMMUNICATION FACILITIES**
  - §7.3 – WIND ENERGY FACILITIES**
  - §7.4 – SIGNS**
  - §7.5 – TEMPORARY USES**
  - §7.6 – HOME AND RURAL FAMILY OCCUPATIONS**
  - §7.7 – ADULT ORIENTED BUSINESS**
  - §7.8 – RETAIL LIQUOR ESTABLISHMENTS**
  - §7.9 – SPORT SHOOTING RANGES AND SPORTS FACILITIES**
  - §7.10 – §7.99 – RESERVED**
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#### **§7.1 – MOBILE HOME PARKS**

##### **General Provisions**

This chapter shall be referred to as “Benton County Mobile Home Park Subdivision Regulations” and any reference to regulations in this Ordinance shall be interpreted to mean regulations embodied in this chapter.

1. Purpose and Objectives: These regulations provide the minimum requirements and standards for establishing or enlarging Mobile Home Parks. These requirements and standards along with recommended additional considerations are intended to:
  - a. Assist mobile home park developers in planning.
  - b. Assure adequate public streets, parking spaces and rights-of-way for firefighting, utilities, and other services.
  - c. Promote compliance with Arkansas State Board of Health “Rules and Regulations pertaining to Mobile Home and Recreation Vehicle Parks” and with other sanitation requirements described herein.
  - d. Protect the respective interest of developers, mobile home park occupants, adjacent property owners, and county taxpayers.
  - e. Promote harmonious development with the existing and future growth of the area.
  - f. Specify information to be included on plats filed for record.
  - g. Identify improvements to be installed at developer expense.
  - h. Assist in providing accurate public records.
2. Legal Authority: These regulations are declared to be necessary to minimize governmental expenditures and operating costs and to promote the health, safety, comfort, convenience, prosperity and welfare of the people.
  - a. Statutory Provisions: These regulations are adopted pursuant to the authority granted by Act 422 of 1977, the County Planning Board Act. Benton County has complied with the County Planning Board Act by adopting an official Highway Plan as part of the County Plan for the recommended development for all or part of the unincorporated territory of Benton

County. The Benton County Mobile Home Park regulations, as initially adopted by the Benton County Quorum Court on November 1, 1977, shall be administered by the Benton County Planning Board in the manner set out by Ordinance No. 77-23 and as may be modified by this chapter.

- b. Jurisdiction: These regulations shall apply to all land in the unincorporated territory; provided that, prior to any County Planning Board approval action with respect to territory for which any municipality vested under Arkansas Statutes, subdivision of land aspects of compliance with this regulation will be coordinated with that municipality.
  - c. Compliance: In accordance with the purpose and objectives listed in Chapter 1 §§1.3 and 1.6, the requirements hereinafter set forth must be complied with before the establishment of a New Mobile Home Park or before enlarging on an existing Mobile Home Park.
3. Definitions: Please refer to Chapter III for definitions. Additional terms which pertain to mobile homes and travel trailer park design and operation, are defined in Arkansas State Board of Health publication, "Rules and Regulations Pertaining to Mobile Home and Travel Trailer Parks." Pertinent terms in these referenced regulations apply unless such terms have been modified by definitions in this Ordinance.

#### A. **Pre-Platting Procedures and Plat Requirements**

- 1. Pre-Platting Procedures: Whenever a developer intends to develop or expand a Mobile Home Park within the meaning of these regulations, and before he prepares a plat, s/he may request a pre-platting conference with the Benton County Planning Board for the purpose of presenting a sketch plan and for reviewing the planning requirements in effect. Such pre-platting conference may be of assistance to the developer through improvement of design and prevention of unnecessary expense in plat preparation.
  - a. Sketch Plan: The sketch plan may be a free hand drawing, superimposed on a site map or aerial photograph, which locates the following:
    - 1) Topography
    - 2) Water courses and flood plains
    - 3) Tree cover
    - 4) Adjoining development
    - 5) Existing sanitary and storm sewers and drainage, if any
    - 6) Existing and proposed streets
    - 7) Proposed Mobile Home and facilities layout
    - 8) Any additional information the Developer feels may be pertinent.
  - b. Conference: Before preparing and submitting the Mobile Home Park Plat application to the County Planning Board, the Developer or his engineer may consult with the members and staff while the plat is in sketch form to take into account access streets, parks, school sites and other facilities or developments that are existing or planned.

#### 2. Format For Sale or Transfer of Ownership

- a. Application: If a sale or transfer of ownership of mobile homes sites or parts of the parcel is contemplated, a full preliminary plat and final plat application, as specified by the Benton County Subdivision Regulations (or by the municipality exercising extra-territorial subdivision jurisdiction), is required. In all other cases, a letter to the County Planning Board requesting approval of the accompanying plat and supporting information is appropriate.
  - b. Accompanying Plat For Review: The sheet size and scale for plats for review shall be flexible; however, a drawing or reproduction at a scale of two-hundred (200') feet to the inch shall be submitted and shall, at minimum, show the boundary bearings and distances.
  - c. Sheet Size: The sheet size for recording shall be a minimum of 18" x 24". This may be a reproduction from a larger sheet size if desired.
  - d. Submittal Packet: The application, plan, and all accompanying supplementary materials shall be submitted electronically via .pdf and .dwg.
3. Handling of Mobile Home Park Plat Subdivision Applications When Sale or Transfer of Ownership Not Contemplated: The developer shall have prepared by a registered land surveyor, a plat of the proposed park or park expansion and shall file with the Planning Board an application for approval of said plat at least two (2) weeks prior to the meeting at which action is desired.
- a. Review Procedures: Upon receipt of the application and plat for mobile home park approval, the staff shall check for conformance with this article. When all application requirements have been met, copies of the plat shall be forwarded to the Planning Board for consideration. The Board shall consult with County officials, utilities, planners, and other authorities as deemed appropriate.
  - b. Notice To Cities And Towns: Upon receipt of an application and plat for mobile home park approval, the planning staff shall notify in writing the mayor and city planner (if applicable) of any city where the proposed park lies within the city's planning area boundary. The notice will briefly describe the proposed application and include a copy of the plat and supporting information, and indicate when it will be considered for action.
  - c. Approval or Rejection: Upon receipt of the staff recommendation, as well as recommendations of any city, official, subcommittee or other authorities consulted, the Planning Board shall vote to approve or reject the mobile home park plat; provided A.C.A. 14-17-208(j) shall, if applicable, be complied with. If the plat is rejected, the board shall note all deficiencies by item upon the plat. One copy of the approved or rejected plat, with condition noted thereon, shall be returned to the developer. The developer may submit a revised plat. When changes are required by the board, all public and private agencies, which in the discretion of the planning board are affected, shall be advised. The grounds for not approving any proposed or planned physical development, or the regulations violated by the application or plat shall also be stated in the record of the meeting and kept open for public inspection.

- d. Approval By Lapse Of Sixty (60) Days: The action of the Board shall take place within sixty (60) days from and after the date of application, unless the developer agrees in writing to an extension of time; otherwise, said plat shall be deemed to have the approval of the Planning Board. In lieu of written approval evidence, filing for record may be accomplished with a certificate from said Planning Board as to the date of application and the failure to take action thereon within the allotted time.
- e. Recording: A plat, prepared by a Registered Land Surveyor, of a parcel specified for use as a mobile home park or of an expansion to an existing park, shall be presented for public recording only after compliance with either of subsection c. or d. above, as appropriate.

#### 4. Plat Details And Attachments

- a. Area Map: An area map shall accompany or appear on the plat. The scale should be large enough to show the location in Section, Township and Range with respect to existing roads, adjacent communities or features (such as lakes or streams).
- b. Name, Scale, North Point, And Date: Include on the Plat, the name of the mobile home park. The plat scale to be shown in both words and graph form. Include a north point arrow and the date.
- c. Boundary Lines: All external boundary lines with length and bearing of courses should be shown. These boundary lines shall be determined by accepted surveying practices.
- d. Topography: Contours, with intervals of five to ten feet depending on terrain, referenced to USGS datum, shall be shown.
- e. Abutting Property: The name of the adjacent subdivision and the name of the adjacent property owners of record on both platted and unplatted land shall be shown in the appropriate location upon the plat. Notations of uses of adjacent land shall be shown (i.e., residential, agricultural, or commercial).
- f. Soil Analysis: The type of soils found in the proposed park area is available from USDA Soil Conservation Service, Soil Survey of Benton County issued January of 1977, shall be shown.
- g. Existing Streets: The location and width of presently existing streets bounding or within the proposed park shall be shown. Names of such streets and roads shall be shown.
- h. New Streets, Walkways, And Parking Space: Including the proposed location of new streets, walkways, and parking spaces on the plat. Length, bearing, name, width, and angles of intersection of streets shall also be shown. Streets shall have grades of 10% or less and be constructed of a hard dustless surface not less than 18 feet in width. They shall connect to accessing streets in an approved and safe manner. Streets shall be 34 feet wide (including shoulders) to provide adequate room for parking. Streets shall be sloped and properly drained into catch basins connected to storm sewer systems (where available). Hard surface walkways shall be provided between home sites and common use areas and service facilities. Adequate illuminations shall be provided for internal streets and walkways. At least two (2) off-street parking spaces should be provided for each home site. Benton

County Subdivision Regulations should be consulted for additional street design and construction requirements. These must be followed for all streets, which may be dedicated to and accepted by the county for maintenance. Unless otherwise agreed, streets within a mobile home park will be maintained by the developer, owner(s), or occupants of the park. Normally, streets bordering and providing access to a mobile home park may be dedicated and will be accepted by the county subject to compliance with county design, construction and inspection requirements.

- i. Existing Utilities: Existing overhead and underground power and communication lines, sewers, water mains, gas mains, culverts and other underground structures within the home park and immediately adjoining it, with pipe sizes and grades, shall be shown on the plat or a separate attachment.
- j. Utility Service: Easements for utility service will be shown on the plat. Include on the plat, or in supporting attachments, specific plans for the following:
  - 1) Water Supply - Where an approved public water supply is reasonably available, the developer should connect with such water supply and make it available to each mobile home site. Certification by the State or County Health Office approving the water supply must be included with each application.
  - 2) Sewage and Sanitation - Where a public sanitary sewer is reasonably accessible, the developer shall connect with such sanitary sewer and provide lines to each mobile home site. A description of the sewage and sanitation system planned for the park and a certificate from State or County Health Office approving the plan must be furnished. (The County Health Office should be contacted early for information about the design and other requirements of the State Health Department Regulations.)
  - 3) City Connections – Where the water supply or sanitation system is connected to lines or mains of a city, town, or special district, design and construction of such facilities shall be according to the requirements and specifications and subject to the supervision and approval of that city, town, or special district.
  - 4) Heating and Cooling Service - Specify the heating, cooling and power services planned. Include a statement from the appropriate utilities services that the service will be provided and that the easements specified on the plat application are adequate.
- k. Community Facilities and Open Spaces: Planned community facilities, play areas and other man-made common use features should be correctly positioned on the plat. State Health Regulations should be consulted for minimum common health facilities required. Natural features, water courses, or open space to be preserved should be designated on the plat.
- l. Flood Area: While not encouraged, any mobile home park area proposed to be located within the 100-year floodplain as identified on Flood Insurance Rate Maps for Benton County, published by the Federal Emergency Management Agency, shall be clearly designated on the plat. A Floodplain Development Permit will be required and a drainage study may also be required by the Planning Board as conditions of approval.

- m. **Buffer Areas:** Buffer areas may be planted vegetation, existing natural vegetation, fencing, or other means concealing properties to a height of seven (7) feet. Normally buffer areas will be required between mobile home parks and adjacent properties and along public street sides. Mobile homes should not be sited closer than thirty (30) feet to established buffers.
- n. **Siting of Mobile Homes:** Single mobile home units shall be allotted at least 3000 square feet of land area; double units at least 4500 square feet of land area. Lot dimensions will be of sufficient size so that mobile homes placed upon the lots will have outside walls or attachments thereto not closer than twenty-five (25') feet from an interior street, nor thirty (30') feet from an exterior street, nor fifteen (15') feet from any other mobile home. Where existing exterior streets may have substandard right-of-way, the Board may require a greater setback from such streets. Lot site numbers shall be posted on each site adjacent to the walkway facing the street. Planned siting of all mobile homes shall be included in the plat and lot site numbers given to each planned location.
- o. **Mobile Home Site Ownership Plans:** Attach a statement confirming that the property owner shall not sell or otherwise convey title to the sites which the mobile homes will occupy except in full compliance with Benton County Subdivision Regulations is required as indicated in Chapter V. If sales or conveyance of sites is contemplated at a future time after Mobile Home Park is approved, the Developer is required to obtain approval from the Benton County Planning Board for any additional requirements of subdivision regulation before executing such sale or conveyance.
- p. **Construction Plans:** Construction Plans and other engineering data pertaining to roads, drainage, water and sanitation systems shall be prepared and certified by a registered professional engineer and should accompany the application. Any approval by the Planning Board of the application will be conditional upon the final approval certification and acceptance of such improvements by the agencies having jurisdiction unless bond is provided as outlined in Chapter V §5.7. An engineer's certificate will be required on the plat to be recorded, that all completed required improvements conform to all applicable engineering requirements and specifications unless bonding is elected in which case "as built" plans will contain this certification.
- q. **Owner's Certificate to Appear on Plat:** Included on the plat shall be owner's certificate which should contain the substance of the following example: "As owner, I hereby certify that I have caused the land described for this mobile home park to be surveyed, platted, dedicated and access rights reserved as represented on this plat (and attachments)."

## **B. Administration and Enforcement**

The County Planning Board shall have responsibility for interpretation and administration. The Board shall protect the public interest by thoroughly examining and coordinating each application without undue delay to the developer.

1. **Bonding:** With reference to Chapter V, §5.7, if the Developer selects bonding for any or all of the required improvements, the developer will be required to post an acceptable surety or cash bond for the total cost of such improvements as estimated by the engineer, by the contractor's

bid, or by the officials having jurisdiction. Utilities that would be extended at no cost to the developers are excluded from the bonding requirement. The bond shall continue until certifying approval of completion has been accepted from the officials having jurisdiction or fourteen (14) days after notifications of completion, whichever is sooner. In event certification is withheld during the fourteen (14) day period after notification, bonding may be continued for reasons and in the amount specified in the withholding document. Properly certified "as built" plans of improvements shall be filed with the Planning Board within sixty (60) days of completion.

2. Compliance with Other Regulations: Other regulations and guidelines of the United States, State of Arkansas and Benton County pertain to the planning, design and operation of mobile home and trailer parks. These regulations and guidelines should be consulted both to help and improve the planning and design of such parks and to learn specific requirements which should be considered as part of a mobile home park application. The approval of a mobile home park application by the Benton County Planning Board does not relieve the developer, owner or operator from complying with the operating, licensing, permit or other requirements of such regulations. Consult the following additional information:
  - a. Benton County Subdivision Regulations (see chapter V).
  - b. Subdivision regulations of a city, if a proposed park is outside the city, but within the city's planning jurisdiction and the city can legally exercise their authority over subdivision review.
  - c. "Rules and Regulations Pertaining to Mobile Home and Travel Trailer Parks," (Arkansas State Board of Health, Little Rock).
  - d. "Arkansas Sewage Disposal Regulation," (Arkansas State Health Department).
  - e. "Environmental Health Guide for Mobile Home Parks," (United States Department of Health, Education and Welfare (HEW)).
  - f. State standards for installation set forth under A.C.A. 20-25-106 and the design of the manufacturer.
  - g. Chapter X of this Ordinance pertaining to flood damage prevention.
3. Fees:
  - a. Plat Application - Application fees for mobile home parks shall be \$300.00.
  - b. Public Hearing - Applications for a mobile home park shall be heard as a public hearing before the Planning Board.
  - c. Inspection - The Board may establish fees for inspections and investigations of mobile home parks.
4. Enforcement: The answering of complaints and the enforcement of this Chapter shall be according to the provisions of Chapter 2, §2.4 of this Ordinance.

5. Inventory of Existing Mobile Home Parks: In order to enforce this regulation, as it pertains to new parks and extensions of existing parks, it shall be required that all owners or operators of existing mobile home parks outside the corporate city limits of cities within Benton County advise the Benton County Planning Board within 180 days after the effective date of this regulation of the following:
  - a. Location and name of park.
  - b. Boundaries of the park.
  - c. Number of mobile home sites in the park.
  - d. Type of water and sewer system.
  - e. The number of mobile home sites the water and sewer system presently serves.
6. Penalties: The answering of complaints and the enforcement of this Chapter shall be according to the provisions of Chapter 2, §2.5 of this Ordinance.

## **§7.2 – TELECOMMUNICATION FACILITIES**

### **A. Purpose and Authority**

The purpose of this Chapter is to promote the efficient and effective provision of communication services in compliance with the Telecommunications Act of 1996 (as amended) while responding to the significant concerns of the citizens of Benton County. The intent of these regulations is to protect the general safety and welfare of the citizens of Benton County by providing for rules governing the location, construction, repair and maintenance of antenna arrays and communication towers in the unincorporated areas of the County. Except as otherwise provided herein, no telecommunications facility may be constructed, erected, moved, enlarged, or substantially altered except in accordance with the provisions of this Chapter.

### **B. Superceding Laws**

All laws, rules, or regulations enacted by the Federal Communications Commission (FCC) or other federal entity shall supersede any of the provisions herein if a conflict exists.

### **C. Definitions Referenced**

The definitions of certain terms referenced in this Section are set forth in chapter III- "Definitions", of this Ordinance.

### **D. General Applicability**

The administrative review procedures of subsection F. below shall apply to the placement, reasonable modification, and regular maintenance of antenna arrays- The remainder of these regulations shall apply to the construction and major modification of towers, whether or not they are designed to



provide cellular, personal communications service and/or specialized mobile radio service, or any other purpose, except as provided herein. These regulations shall also apply to all outbuildings, sites, and facilities built in connection with any tower governed by this Chapter.

Any major modifications to a tower or facility must be approved in the same way that a new tower would have to be approved. If a tower is damaged or for other reasons is to be replaced, the repair or replacement is subject to these regulations only if the repair or replacement amounts to a major modification as defined herein. These regulations do not cover incorporated areas within Benton County, unless specifically approved and/or adopted by a municipality.

#### **E. Exemptions**

The regulations adopted herein shall not apply to the following facilities:

1. Towers for personal use such as for amateur radio, citizens band radio, AM or FM radio, or broadcast television service which, including the height of all attached antenna arrays, do not extend more than eighty (80') feet from the ground. However, all such towers are required to seek a building permit.
2. Placement of antenna arrays which cannot be used for emergency services or 911 calls on existing support structures so long as the placement does not increase the total height of the original support structure by more than twenty-four (24') feet, and does not significantly increase the lighting or noise levels of the structure. However, any arrays proposed to be affixed to an existing support structure previously approved under the scope of these regulations must receive a building permit and submit an engineering report that verifies the structural integrity of the additional weight and bulk.
3. Temporary structures designed to be used for not more than fourteen (14') days in connection with a special event or for any reasonable period of time immediately following an emergency, including without limitation those towers that are identified as "C. O. W.s" or "Cellular on Wheels".

#### **F. Administrative Approvals for Minor Facilities**

Certain projects falling within the scope of this Ordinance are subject only to administrative review, and may be administratively approved in the manner described herein. Projects that are subject only to administrative review shall include the following:

1. Projects Subject to Administrative Review.
  - a. Placement of antenna arrays which might be used for emergency services or 911 calls on existing support structures which do not increase the total height of the original support structure by more than twenty-four (24') feet, and which will not significantly increase the lighting or noise levels of the structure. Outbuildings and facilities built in connection with such antenna arrays are subject to the same administrative review. Note that such arrays proposed to be affixed to an existing support structure previously approved under the scope of these regulations must receive a building permit and submit an engineering report that verifies the structural integrity of the additional weight and bulk.

- b. The co-location of all other antenna arrays on existing towers, buildings, water towers, or other built structures. Antenna arrays may not be placed on trees or any other living organism. Note that arrays proposed to be affixed to an existing support structure previously approved under the scope of these regulations must receive a building permit and submit an engineering report that verifies the structural integrity of the additional weight and bulk.
  - c. The replacement of existing antenna arrays with new antenna array equipment that is similar in size, color, and structure.
  - d. The modification of an existing support structure so that it is more architecturally integrated into the surrounding environment. The effort to make a support structure and/or antenna array less visible shall not constitute a major modification.
2. Administrative Review Application Submittal. A project involving placement of an antenna array on an existing support structure, which is subject to administrative review pursuant to the terms of this Chapter, shall be submitted to the staff of the Benton County Planning Office, and shall contain the following:
- a. A completed application
  - b. An engineered site plan depicting the proposed location of the antenna array. The site plan shall include:
    - 1) A plan for the entire parcel identifying the location of the tower
    - 2) A detail showing a dimensioned layout of the tower including the easement on which it is located.
    - 3) Construction detail of the new equipment to be installed. Planning staff accept a product information sheet in place of a detailed drawing if specific enough.
    - 4) Meet all of the requirements for a standard site plan as per Chapter VI of this ordinance.
  - c. A cover letter that includes a complete written description of all new equipment being erected on an existing tower.
  - d. A notarized owner's affidavit for both the property and the owner/operator of the easement and tower structure subject of the application.
  - e. Engineering report or statement verifying that the addition of an antenna array will not compromise the load capacity of the existing tower.
  - f. Review fee

3. Procedures for Administrative Review of Telecommunication Facilities. The following procedures shall be followed for applications for administrative review of telecommunications facilities:
  - a. Application: Submit application materials as per Section B. above.
  - b. Staff Review: If the application submittal is complete and the proposed improvement complies with the terms of this Chapter, the staff shall review and approve the application without the necessity for review by the full Planning Board. Approval may be with or without conditions as applicable.
  - c. Variance from Regulations: Administrative review shall not be applicable if any variance from these regulations is requested. Such items shall be scheduled for the Planning Board.
  - d. Decision: The staff shall make a decision on any administrative review application within fifteen (15) business days after date stamping unless the applicant approves an extension of time.

**G. Planning Board Review for Major Telecommunication Facilities**

1. Projects Subject to Planning Board Review. If a telecommunications facility may not be approved administratively, pursuant to Subsection F, then a Planning Board approval pursuant to the requirements and process below shall be required before placement of such facilities.
2. Planning Board Review Application Submittal. A project which is subject to Planning Board review pursuant to the terms of this Chapter shall be submitted to the Staff of the Benton County Planning Office. A complete application submittal shall consist of the following:
  - a. A completed application
  - b. An engineered site plan set of at least 11" x 17" depicting the proposed location of the antenna array. The site plan shall include:
    - 1) A plan for the entire parcel identifying the location of the tower.
    - 2) A detail showing a dimensioned layout of the tower including the easement on which it is located.
    - 3) Construction detail of the facility and associated structures and equipment to be installed including, a cross section of the tower structure, detail on guy wire and anchorage and foundation, lighting, fencing and security, elevation of tower and buildings
    - 4) Meet all of the requirements for a standard site plan as per Chapter VI of this Ordinance.
  - c. Written Narrative: A written report is to be submitted including information describing the tower and associated structures and equipment including tower height and design, engineering specifications detailing construction of the tower, base and guy wire anchorage.

Information describing the proposed painting and lighting schemes, the tower's capacity, including the number and type of antennas that it can accommodate as part of a co-location determination (see Subsection H below)

- d. Owner Affidavit: A notarized owner's affidavit for both the property and the owner/operator of the easement and tower structure subject of the application.
  - e. Engineering Report: Engineering report or statement verifying that the addition of an antenna array will not compromise the load capacity of the existing tower.
3. Procedures for Planning Board Review of Telecommunications Facilities. The following procedures shall be followed on applications for Planning Board review of telecommunications facilities. The Planning Board shall conduct a public hearing on each such application:
- a. Application: Submit application materials as per Section B. above.
  - b. Staff Review: If the application submittal is complete, the staff shall conduct a technical review of the application and prepare a report for the Planning Board.
  - c. Notification: Property owners within 0.5 miles of the proposed telecommunications facility shall be notified of the public hearing in which the Planning Board shall consider action on the application as per the notification requirements for public hearing in Chapter IV, §4.11 above.
  - d. Decision: The Planning Board, within a duly noticed public hearing, shall make a decision on telecommunications facilities within sixty (60) days after date stamping of complete application unless the applicant approves an extension of time. The Planning Board shall approve, approve with conditions, or deny any such application.
4. Review Criteria for Planning Board Approval. The following factors will be considered in granting approval of a telecommunications facility in addition to the factors listed above and factors set out in the Ordinance to determine whether to grant approval. The Planning Board may waive or reduce the burden upon the applicant for one or more of the following criteria if it is determined that the goals of this Ordinance would still be served thereby.
- a. Height of the proposed tower;
  - b. Proximity of the tower to residential structures and property boundaries;
  - c. Nature of uses on adjacent and nearby properties;
  - d. Surrounding topography;
  - e. Surrounding tree coverage and foliage;
  - f. Design of the tower, with particular attention paid to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;

- g. Availability of suitable existing towers and other structures as discussed in Subsection E below.
5. Review of Other Options. No new tower shall be constructed unless the applicant demonstrates to the reasonable satisfaction of the Planning Board that other existing towers or structures do not provide a more suitable and/or feasible location for the applicant's proposed antenna. Evidence submitted may consist of a written statement (in affidavit form) citing one or more the following conditions:
- a. No tower or suitable structures exists within the geographic area, which meets the applicant's engineering requirements.
  - b. Existing towers or suitable structures are not of sufficient height to meet the applicant's engineering requirements.
  - c. Existing towers or suitable structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. The fees, cost, and/or contractual provisions required by the owner of an existing suitable site for co-location of the applicant's antenna is unreasonable.
  - e. Other significant limiting factors make existing towers or structures unsuitable for colocation of the proposed antenna.

#### **H. General Criteria for Telecommunications Facilities**

1. Preference for Co-Location.
- a. All applicants seeking permission to construct one or more towers in Benton County shall cooperate in co-location of antenna arrays on their towers where feasible. This requirement shall not be deemed to require applicants to incur unreasonable expense to construct their towers in order to facilitate co-location. All applicants seeking permission to construct a new tower primarily dedicated for cellular or PCS communication purposes shall design and construct said tower so as to accommodate co-location of at least one additional cellular or PCS provider in addition to the applicant. The plan shall depict and note that the tower shall provide co-location for one (1) additional cellular or PCS provider.
  - b. All applicants seeking permission to construct a tower in order to serve one or more specific purposes must demonstrate in the application process that they had made a reasonable and good faith effort to co-locate their antenna arrays on existing towers or support structures. This paragraph does not apply to applicants who desire to construct a tower for the primary purpose of attracting other persons to co-locate on the tower.
  - c. In complying with the requirements herein, applicants shall submit a report of all co-location possibilities within a two (2) mile radius of the proposed site. Such report shall include the following:

- 1) Why each tower is suitable or unsuitable for technological reasons.
- 2) Why each tower is suitable or unsuitable for safety reasons.
- 3) An explanation of why the owner(s) of a given communication tower structure could not be contacted.
- 4) An explanation of any interference or transmission problems that might occur from co-locating on a given communication tower structure.
- 5) A statement of the applicant's foreseeable future needs and then an explanation of why a given communication tower structure would not satisfy the reasonable foreseeable future needs of the applicant.

With regard to the supplemental information that may be required by the staff of the Planning Department, the applicant may delete any and all references to confidential pricing information in any correspondence required to be submitted.

2. Setback from Road. All towers shall be set back from the nearest edge of all roads, as recognized by the County 911 Administration Office with a specific name or number, by at least fifty (50) feet plus the height of the tower. The edge of the road shall be defined as the edge of pavement or the edge of the unpaved surface at the time of the application. Due to topographic or other natural features the Planning Board may grant a variance for the additional fifty (50) feet. Wherever possible, towers must follow the full setback requirements.
3. Setback from Residences. Towers subject to this Chapter will be located so that there will be no residences where the nearest part of the residence is within the height of the tower from the base plus fifty (50) feet, unless all persons owning said residences or the land on which said residences are located consent in a signed writing to the construction of said tower.
4. Mitigation of Visual Impact. In minimizing any aesthetic problems with a proposed tower or antenna array, applicants agree to take the following steps:
  - a. Signage at the site is limited to non-illuminated warning and equipment identification signs.
  - b. Unless specifically required by law or a regulatory authority or because there is no technologically feasible alternative, no tower shall be equipped with strobe lights that operate at night.
4. Precautions Against Excessive Noise. Equipment used in connection with a tower or antenna array shall not generate noise that can be heard beyond the site. This prohibition does not apply to air conditioning units no noisier than ordinary residential units or generators used in emergency situations where the regular power supply for a facility is temporarily interrupted; provided that any permanently installed generator shall be equipped with a functional residential muffler.

5. Precautions Against Trespassers. The base of every tower must be surrounded with a fence at least six (6') feet in height and topped with either barbed wire or razor wire. The gate for such fence shall be kept locked except when authorized personnel are working on or around the tower. The fence must be posted with signs warning against trespass and providing a number to call in case of an emergency. With the exception of towers constructed in such a way that it is not reasonably practicable to do so, any ladder or other apparatus designed to aid in the climbing of a tower shall be constructed so that the bottom twelve (12') feet of such ladder or apparatus is not readily accessible except when it is in use by construction, maintenance, repair or other authorized personnel.
6. Tower Illumination. If required, the tower lighting must conform to the FCC regulations for both day (strobe) and night (blinking red) lighting at the appropriate locations on the tower.

#### **I. Maintenance of Towers and Facilities**

By making an application hereunder, the applicant agrees to regularly maintain and keep in a reasonably safe and functional manner all towers, antenna arrays, fences and outbuildings owned by applicant which are located in the County. The applicant further agrees to conduct inspections of all such facilities not less frequently than every twelve (12) months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities. The staff of the Planning Department may request in writing from the applicant documentation regarding such inspections and maintenance activities at any such facilities. Such requests by staff for documentation shall not be made more than two (2) times per year on any given tower. The applicant agrees to provide the documentation within thirty (30') days after the mailing of any such request from the staff. Said documentation shall be in the form of a sworn statement and shall include but not limited to the following items, unless the staff specifically indicates that one or more of the following items need not be provided:

1. The estimated date on which the tower was originally constructed and the date of all modifications thereto.
2. Verification of safe and appropriate grounding and electrical connections as per the version of the National Electrical Code in effect at the last modification or addition to the electrical system.
3. Structural design certification by the tower manufacturer regarding the facility's capability to withstand a combination of 1/2" accumulation of ice and 70 mile per hour winds.
4. A statement that all antenna arrays on such tower have been attached and maintained in accordance with the specifications of the manufacturer, if any.
5. For a guyed tower, a statement that all guy wires are being properly maintained so that structural integrity of the tower is not compromised.
6. For any lattice tower, a statement that all welds and other joints are being properly maintained so that they do not show signs of wear which would make the tower unsafe.

7. For lighted towers, verification of payment of the most recent applicable electric bill or other evidence that the facility remains functional and the safety signals are in working order.
8. For unlit towers, a statement by the owner verifying the continued use or need for the structure.
9. For structures which are painted for cosmetic reasons, proof that the tower has been painted within the last five (5) years, or proof satisfactory to the staff that the exterior does not currently need painting.

If any such information is not submitted within thirty (30) days after the first notice, the staff shall send a second written notice requesting the documentation within fifteen (15) days from the date of the second mailing. If the staff does not receive the requested information by the end of normal business on the 15<sup>th</sup> day from the date on which the second notice was mailed, the staff shall place the issue of whether the tower has been abandoned on the agenda at the next regularly scheduled Planning Board meeting. At that meeting, the Planning Board shall determine whether the subject tower has been abandoned. If the owner/operator fails to respond or appear before the Board, or fails to present evidence regarding the above described items, the Planning Board shall make a determination of abandonment and forward said finding to the Quorum Court for action.

The Quorum Court, in its regular course of business, shall consider the determination of abandonment forwarded by the Planning Board, along with any subsequent submittals by the owner/operator of the tower. The owner/operator may request and be given a reasonable time, not to exceed three (3) months, to implement a plan to restore the facility to safe operations. The Quorum Court may adopt such plan or any substitute plan deemed by the Court to be reasonable. If at any time, the Court finds that the tower in question has been abandoned, the Court shall request that the County Judge or their designee to have the tower removed at the owner's expense within (90) days of said decision. Failure to timely remove these facilities shall constitute a nuisance under these regulations subjecting the owner and/or lessors to a fine not exceeding \$250.00. Each day of delinquency shall constitute a new violation. Upon removal the tower owners shall re-vegetate the telecommunication facility site to blend with existing surrounding vegetation at their expense. Any salvage value derived from the removed structures shall be applied to the costs of removal, if not paid by the owner.

#### **J. Regulatory Compliance**

1. All towers must meet or exceed current Federal standards and regulations of the FAA, the FCC, and any other agency of the Federal or state government with the authority to regulate telecommunications facilities and the construction and specifications thereof. If such standards and regulations are changed, then the facility owners governed by this Chapter shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling Federal or state agency. Failure to timely bring the facilities into compliance with such revised standards and regulations shall constitute grounds for removal of the non-compliant facility at the owner's expense and/or grounds to terminate or not renew owner's approval.
2. The applicant, by requesting approval of any telecommunications facility in Benton County, certifies and agrees that no such facility under the Applicant's control will emit electro-magnetic



radiation (EMR) in excess of federal safety and health guidelines as adopted by any authorized federal regulatory agency.

#### **K. Fees**

Refer to Chapter II, Administration and Enforcement, §2.2 for initial review fee and annual review fee as may be required.

#### **L. Burden of Proof**

Applicant must prove that any application under these Chapter satisfies all of the applicable requirements of this Chapter.

#### **M. Opportunity for Public Response**

Except as expressly provided herein, all landowners of record owning land within 0.5 miles of the base of the tower and all landowners of record owning property adjacent to the parcel of land on which any proposed tower or major modification subject to this Chapter is to be placed, must be notified in writing and given a chance to voice opposition or support for a proposed tower or antenna array at a public meeting. For purposes of this provision, a landowner shall be considered to own property which is "adjacent" to the parcel of land on which the tower is to be constructed if it shares a common boundary with the parcel in question, or if it would share a common boundary except for the existence of a public road. In addition to the foregoing notice requirements, any time a variance from any of the requirements in these regulations is sought, all persons owning land within the height of the tower plus fifty (50) feet from the base of the tower must be notified of the requested variance, and be given an opportunity to respond to the request.

### **§7.3 – WIND ENERGY FACILITIES**

#### **A. Applicability**

This section shall govern the siting, erection, maintenance, and demolition of wind generating facilities including small wind turbines and large/utility scale wind turbines. Both Horizontal Axis Wind Turbines (HAWT) and Vertical Axis Wind Turbines (VAWT) are permitted in Benton County as per this Ordinance. Note that micro-scale wind turbines are not subject to the approval provisions of these regulations but shall be defined and referred to below.

#### **B. Conflict**

If there is a conflict between provisions in this Chapter, the more stringent shall apply. If there is a conflict between a provision in this Chapter and that of another Chapter in this Ordinance, the provision of this Chapter shall apply.

#### **C. Classification of Wind Energy Facilities**

The following types of wind generation facilities (as detailed in table 7.1 below) are permitted to be developed in Benton County subject to the provisions of this chapter:

1. Micro scale wind turbines
2. Small wind turbines (administrative review as per subsection F. below)
3. Large/utility scale wind turbines (public hearing review as per subsection G. below)

**Table 7.1 – Types of Wind Generation Facilities**

Facility Type	Aggregate Capacity	Turbine Height	Maximum Number of Turbines	Review Threshold
Micro Scale	10Kw or	See note <sup>1</sup>	1/lot	No Planning Review/Bldg.
Small Scale	10 to 100	NA	1/lot or per 5	Administrative Approval
Large/Utility Scale	Over 100	NA	1/lot or per 5	Planning Board Approval

<sup>1</sup> Micro wind turbine facilities shall be no higher than that which complies with the setback requirements noted in Section 3 below or 80' in height, whichever is lower.

#### **D. Exemptions**

1. Micro-Scale Turbines: which are to be located on existing single structures, residential or otherwise, and are solely for the purpose of limited application individual-scale power generation, are exempted from review provided they are set back at least the distance from all property lines equal to or greater than the sum of the pole height plus the height of one blade. They also must meet all local building codes and are limited to one (1) per building lot as an exempted use.
2. Roof-Mounted Wind Turbines: Provided that the maximum height shall be equal to or less than half the height of the building being utilized for support, roof mounted wind turbines are exempt from these regulations but shall meet all building code requirements.
3. Agricultural Use: Traditional wind generating facilities used strictly for agricultural use on agriculturally designated land shall be exempt from these regulations.

#### **E. Modifications**

Any physical modification to an existing wind energy facility that materially alters the location or increases the area of development on the site or that increases the turbine height or the level of sound emissions of any wind turbine shall require a plan modification under this Chapter. Like-kind replacements and routine maintenance and repairs shall not require an approved plan modification.

#### **F. Administrative Review**

The Small Wind Energy Conversion System (SWECS) shall not be considered an accessory use and shall comply with all requirements under this section. Small wind energy conversion systems not meeting the technical requirements of this section may be approved by the Planning Board following a duly noticed and published public hearing.

1. Administrative Review Process: Applicants seeking administrative approval of SWECS shall

adhere to the following process:

- a. Conduct a pre-application discussion with planning staff (recommended)
  - b. Submit application packet with the requirements listed in Subsection 2. below
  - c. Staff may waive any submission requirement if they receive a specific request in writing for a waiver from the applicant and issue a written finding that, due to special circumstances of the application, adherence to that requirement is not necessary to determine compliance with the standards of this Chapter.
  - d. Administrative reviews shall be completed within thirty (30) days whereby the staff reviewer shall provide the applicant with a decision of approved, approved with conditions, or denied. In each case, the staff reviewer shall generate an official decision letter outlining the reasons for the decision.
  - e. Upon receipt of administrative approval, the applicant may file for a building permit for the facility.
  - f. Appeals: Appeals of administrative decisions shall be directed to the Planning Board.
2. Administrative Review Requirements: The following items shall be submitted in support of an application for administrative approval of a SWECS:
- a. Application: A completed application form.
  - b. Application Fee: A personal or certified check or money order in the amount of \$250.00 made out to Benton County.
  - c. Cover Letter: including a project description and detailed narrative describing the scope, scale, and location of the proposed project.
  - d. Site Plan: utilizing a standard engineering scale not to exceed 1:100, indicating the placement of the wind turbine(s) and distances from the proposed turbine location and the nearest built structure, any above ground utilities, the nearest trees, and all property lines. A fall zone shall be indicated on the plan to approximate the area around the base of the turbine that would likely receive the tower and turbine if it were to fall.
  - e. Turbine Information: specific information on the type, model, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each wind turbine being proposed, tower and electrical transmission equipment shall be provided in the form of a report that includes contact information for questions.
  - f. Engineered Turbine Specifications: Drawings of the wind turbine structure, including the tower, base, and footings and/or foundation as provided by the manufacturer: In addition, an engineering analysis of the tower showing compliance with the International Building Code certified by a licensed professional engineer.

- g. Electrical Components: Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the adopted National Electrical Code (NEC). All building permits require installations to be designed and sealed by an engineer licensed in the State of Arkansas, designs shall include structural analysis.
- h. Additional Information: may include:
  - 1) Soil Studies: For standard soil conditions (not including gravel, sand, or muck), foundations developed by the wind turbine manufacturer shall be acceptable for turbine installations of 20kW or less and will not require project-specific soils studies or an engineer's wet stamp.
  - 2) Utility Notification: No building permit for a grid-connected SWECS shall be issued until a copy of the utility company's approval for interconnection of a customer-owned (SWECS) generator has been provided.
  - 3) Other Data: The Planning Board may require additional information from the applicant based on unique circumstances of the parcel or area in which the SWECS is proposed to be located.

3. SWECS Technical Requirements:

- a. Setbacks: The base of the tower shall be set back from all property lines, structures, public right-of-ways, and public utility lines a distance equal to the total extended height (pole height [p] + height of one blade [b]). To demonstrate compliance with this provision, the site plan shall provide a clearly depicted series of radii drawn around each tower showing:
  - 1) A perimeter equal to one and one-half (1.5) times the tower height
  - 2) Two hundred and fifty (250) foot perimeter
  - 3) Five hundred (500) foot perimeterSite plan shall also show ownership and land uses within the above mentioned perimeters.
- b. Number: Only one (1) SWECS wind turbine structure shall be allowed per lot (or alternatively per five [5] acres).
- c. Location: All small wind turbines shall be located in the rear yard only. Exceptions to this standard may only be considered as a variance.
- d. Off-Grid: Off-grid systems, facilities that use alternative energy systems exclusively for all power needs, and are not connected to a public power source or "grid" for any purpose, are permitted but must meet minimum standards for electrical components that provide residential electrical service due to public health and safety concerns. Such systems must be approved for all electrical components by the County Chief Building Inspector.

- e. Minimum Blade Clearance: The blade tip clearance for small wind turbines shall, at its

lowest point, have a ground clearance of not less than thirty (30') feet.

- f. Color/Finish: Wind turbines, exclusive of the towers, shall be painted a non-reflective, non-obtrusive color such as the manufacturer's default color option or a color that conforms to the environment and architecture of the community in which it is sited. Towers shall maintain galvanized steel, brushed aluminum or white finish, unless FAA standards require otherwise.
- g. Sound: Sound produced by the turbine under normal operating conditions, as measured at the property line, shall not meet or exceed the definition of nuisance noise as defined in Chapter IV, §4.8 of this Ordinance. Sound levels, however, may be exceeded during short-term events such as utility outages, severe wind storms, or other causes outside the control of the property owner.
- h. Wind Turbine Equipment: Small wind turbines shall be approved by any small wind certification program recognized by the American Wind Energy Association (AWEA).
- i. Maintenance of Wind Turbine and Related Facilities: By making an application hereunder, the applicant agrees to regularly maintain and keep in a good and safe operating condition all towers, wind turbines, fences, outbuildings, and other related equipment or structures owned by the applicant which are located in the County. The owner of a wind turbine shall complete or cause to be completed all necessary maintenance and improvements to the structure if it is determined to be inoperable or hazardous to neighboring properties. The applicant further agrees to conduct inspections of all such facilities not less frequently than every twelve (12) months. The applicant agrees that said inspections shall be conducted by one or more designated persons holding a combination of education and experience so that they are reasonably capable of identifying functional problems with the facilities. The staff of the Planning Office may request in writing from the applicant the appropriate documentation regarding such inspections and maintenance activities at any such facilities. Such requests by staff for documentation shall not be made more than three (3) times per year on any given facility. The applicant agrees to provide the documentation within thirty (30) days after the mailing of any such request from the staff. Said documentation shall be in the form of a sworn statement and shall include but need not be limited to the following items, unless the Staff specifically indicates that one or more of the following items need not be provided:
  - 1) The estimated date on which the tower was originally constructed and the date of all modifications thereto.
  - 2) Verification of safe and appropriate grounding and electrical connections as per the version of the National Electrical Code in effect at the last modification or addition to the electrical system.
  - 3) Structural design certification by the tower manufacturer regarding the facility's capability to withstand a combination of 1/2" accumulation of ice and 70 mile per hour winds.
  - 4) A statement that all antenna arrays on such tower have been attached and maintained in accordance with the specifications of the manufacturer, if any
  - 5) For a guyed tower, a statement that all guy wires are being properly maintained so that structural integrity of the tower is not compromised.

- 6) For any lattice tower, a statement that all welds and other joints are being properly maintained so that they do not show signs of wear which would make the tower unsafe.
- 7) For lighted towers, verification of payment of the most recent applicable electric bill or other evidence that the facility remains functional and the safety signals are in working order.
- 8) For unlit towers, a statement by the owner verifying the continued use or need for the structure.
- 9) For structures which are painted for cosmetic reasons, proof that the tower has been painted within the last five (5) years, or proof satisfactory to the Staff that the exterior does not currently need painting.

If any such information is not submitted within thirty (30) days after the first notice, the Staff shall send a second written notice requesting the documentation within fifteen (15) days from the date of the second mailing. If the Staff does not receive the requested information by the end of normal business on the 15<sup>th</sup> day from the date on which the second notice was mailed, the Staff shall place the issue of whether the tower has been abandoned on the agenda at the next regularly scheduled County Planning Board meeting.

At that meeting, the Planning Board shall determine whether the subject tower has been abandoned. If the owner/ operator fails to respond or appear before the Board, or fails to present evidence regarding the above described items, the Planning Board shall make a determination of abandonment and forward said finding to the Quorum Court for action.

The Quorum Court, at its next regularly scheduled meeting, shall consider the determination of abandonment forwarded by the Planning Board, along with any subsequent submittals by the owner/operator of the tower. The owner/operator may submit a remedial action plan which may call for the owner/operator to be given a reasonable time, not to exceed three months, to implement a plan to restore the facility to safe operations. The Quorum Court may adopt such plan or any substitute plan deemed by the Court to be reasonable. If at any time, the Court finds that the tower in question has been abandoned, the Court shall instruct the County Judge to have the tower removed at the owner's expense. Any salvage value derived from the removed structures shall be applied to the costs of removal, if not paid by the owner.

Compliance with FAA Regulations: No SWECS shall be constructed, altered, or maintained so as to project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection.

- j. Compliance with National Electric Code: Building permit applications for SWECS shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- k. Electrical Wires: All electrical wires associated with a SWECS shall be located underground.
- l. Self-Supporting Structures: All tower structures shall be of monopole construction unless attached to a structurally reinforced roof where such support is not warranted. No lattice structures or towers requiring a guy wire supports shall be permitted.

- m. **Safety Shutdown:** Each wind turbine shall be equipped with both manual and automatic overspeed controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, furling, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
- n. **Abandonment:** If a wind turbine is determined to be inoperable the current property owner shall be notified that they must, within six (6) months of receiving the notice, restore their system to operating condition or the property owner shall, at his/her expense, remove the wind turbine and tower for safety reasons. If the owner(s) fails to restore their system to operating condition within the six-month period, the tower then would be defined as a public nuisance and be addressed under the provisions of County Ordinance O-07-28.
- o. **Signage:** All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.
- p. **Lighting:** No illumination of the turbine or tower shall be allowed unless required by the FAA.
- q. **Access:** With the exception of facilities constructed in such a way that it is not reasonably practicable to do so, any ladder or other apparatus designed to aid in the climbing of a WECS shall be constructed so that the bottom twelve (12) feet of such ladder or apparatus is not readily accessible except when it is in use by construction, maintenance, repair or other authorized personnel.

#### **G. Planning Board Public Hearing Review**

Applications for Large/Utility Scale (LUS) wind turbines shall be submitted to the Planning Board for technical review and public hearing. The process and plan requirements for LUS wind turbines are provided below.

1. **Planning Board Approval Process:** Applicants seeking Planning Board approval of LUS wind turbines shall adhere to the following process:
  - a. Conduct a pre-application discussion with planning staff (recommended)
  - b. Technical reviews for Planning Board approval shall be conducted procedurally as a site plan review application. Please refer to Chapter VI for a detailed description of application process and requirements. In addition to the basic requirements of Chapter VI, applicants for LUS Wind Turbine projects must also provide the information listed in Subsection 2. below.
  - c. Approved LUS facilities shall be required to file an annual report with the Planning Board

which provides the following information:

- 1) Current ownership and management information
  - 2) Current relationships with electrical utilities
  - 3) Up-to-date maintenance report on each tower
2. Planning Board Review Requirements: The following items shall be submitted in support of an application for (a) large/utility scale wind turbine(s):
- a. Large Scale Industrial/Commercial Development Application: All plan submission requirements of Chapter VI, Site Plan Review for Major/Regional Impact Commercial/Industrial Site Plan Review, including but not limited to:
    - 1) Completed application
    - 2) Application fee
    - 3) Site plan
    - 4) Cover letter with project narrative
    - 5) Description/history/experience of company
  - b. Site Plan Detail: The site plan shall also include:
    - 1) Full property dimensions for each parcel that is included as part of the project
    - 2) Location and ground elevation of each turbine (WECS)
    - 3) Setbacks as per subsection C.1) below
    - 4) All proposed facilities and structures on the site including roads or driveways, electrical lines and other transmission infrastructure, and other above ground utilities, substations, storage or maintenance buildings, fencing, or any other related or unrelated appurtenance, structure, or site improvement.
    - 5) The distance from the proposed turbine (WECS) location(s) and any built structure in each of the setback zones
  - c. Turbine Information: specific information on the type, model, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each wind turbine being proposed, tower, and electrical transmission equipment. Elevation drawings of each turbine showing total height, turbine dimensions, tower and turbine colors and markings, ladders and climbing pegs, distance between ground and lowest point of any blade, and access doors. One drawing may be provided if units are to be identical.
  - d. Engineered Turbine Specifications: Drawings of the wind turbine structure, including the tower, base, and footings and/or foundation as provided by the manufacturer: In addition, an engineering analysis of the tower showing compliance with the International Building Code certified by a licensed professional engineer.
  - e. Electrical Components: Building permit applications for WECS shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the adopted National Electrical Code (NEC). All building permits require installations to be designed and sealed by an engineer licensed in the State of Arkansas, designs shall include structural analysis.



- f. Noise Study: prepared by a qualified professional, shall demonstrate that except for short-term events such as utility outages and severe windstorms, the large/utility scale wind turbine shall not produce noise in excess of 55 dbA at the property lines. The noise study shall include:
- 1) A description and map of the project's noise producing features, including the range of noise levels expected, and the basis for such expectations.
  - 2) A description and map of the noise sensitive environment, including any sensitive noise receptors (e.g. residences, hospitals, libraries, schools, places of worship, parks, areas with outdoor workers and other facilities where quiet is important or where noise could be a nuisance) within one-thousand-feet (1,000').
  - 3) A survey and report prepared by a qualified engineer that analyzes the pre-existing ambient noise (including seasonal variation) and the affected sensitive receptors located within one-thousand-feet (1,000').
  - 4) A description and map of the cumulative noise impacts.
  - 5) A description of the project's proposed noise control features and specific measures proposed to mitigate noise impacts for sensitive receptors as identified above to a level of insignificance.
- g. Soil Study: A geotechnical report shall be furnished along with the certification which shall, at a minimum, include the following:
- 1) Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - 2) Foundation design criteria for all proposed structures.
  - 3) Slope stability analysis.
  - 4) Grading criteria for ground preparation, cuts and fills, and soil compaction.
- h. Shadow/Flicker: A shadow/flicker model shall demonstrate that shadow/flicker shall not fall on, or in any existing residential structure without written permission from the homeowner. The shadow/flicker model shall:
- 1) Map and describe within a one-thousand (1000') feet radius of the proposed wind energy system the topography, existing residences and location of their windows, locations of other structures, wind speeds and directions, existing vegetation and roadways. The model shall represent the most probable scenarios of wind constancy, sunshine constancy, and wind directions and speed;
  - 2) Calculate the locations of shadow/flicker caused by the proposed project and the expected durations of the shadow/flicker at these locations, calculate the total number

of hours per year of shadow/flicker at all locations;

- 3) Identify problem areas where shadow/flicker will interfere with existing or future residences and roadways and describe proposed mitigation measures, including, but not limited to, a change in siting of the wind energy conversion system, a change in the operation of the wind energy conversion system, or grading or landscaping mitigation measures.
  - i. Use of MET (Meteorological) Towers: Met Towers may be utilized for large or utility scale wind turbines only as approved by the Planning Board. The location, height, and length of time such structures are to be erected shall be provided as part of the application.
  - j. Impact on Wildlife: A study shall be provided by a professional that demonstrates that the development and operation of the wind turbine(s) in question shall not have an adverse impact on endangered or threatened avian or bat species and their critical habitats.
  - k. Additional Information: The Planning Board may require additional technical studies deemed necessary to fully evaluate the application. Should the services of an outside consultant be needed to evaluate any such technical studies, the cost of such services shall be borne by the applicant.
3. Large/Utility Scale (LUS) Wind Turbine Technical Requirements
- a. Setbacks: The base of the tower shall be set back [s] from all property lines, structures, public right-of-ways, and public utility lines a distance equal to the total extended height (pole height [p] + height of one blade [b] = [s]). To demonstrate compliance with this provision, the site plan shall provide a clearly depicted series of radii drawn around each tower showing:
    - 1) A perimeter equal to one and one-half (1.5) times the tower height
    - 2) Five hundred (500') foot perimeter
    - 3) One thousand (1000') foot perimeterSite plan shall also show ownership and land uses within the above mentioned perimeters.
  - b. Number: Only one (1) Large/Utility Scale wind turbine structure shall be allowed per lot (or alternatively per five [5] acres).
  - c. Location: LUS wind turbines may be located on any portion of a lot provided that setback requirements are met.
  - d. Utility Notification: No building permit for a LUS shall be issued until a copy of the utility company's approval of the facility has been provided to the Building Division.
  - e. Minimum Blade Clearance: The blade tip clearance for large/utility scale wind turbines shall, at its lowest point, have a ground clearance of not less than thirty (30') feet.
  - f. Color/Finish: Wind turbines, exclusive of the towers, shall be painted a non-reflective, non-

obtrusive color such as the manufacturer's default color option or a color that conforms to the environment and architecture of the community in which it is sited. Towers shall maintain galvanized steel, brushed aluminum or white finish, unless FAA standards require otherwise.

- g. Sound: Sound produced by the turbine under normal operating conditions, as measured at the property line, shall not exceed the definition of nuisance noise. Sound levels, however, may be exceeded during short-term events such as utility outages, severe wind storms, or other causes outside the control of the property owner.
- h. Wind Turbine Equipment: WECS shall be approved by relevant certification program recognized by the American Wind Energy Association (AWEA) and meet the standard for LUS WECS as recommended in AWEA's Recommended Practice for Compliance of Large Land-based Wind Turbine Support Structures.
- i. Wind Turbine Maintenance: All wind turbines shall be maintained in good operating condition throughout the life of the facility. The owner of a wind turbine shall complete all necessary maintenance and improvements to the structure if it is determined to be inoperable or hazardous to neighboring properties. Poorly maintained or inoperable facilities shall be notified by the Planning Board that they have six (6) months in which to either restore the facility to good operating condition or remove it from the site.
- j. Requirement for Engineered Drawings: Building permit applications for LUS wind energy systems shall be accompanied by standard drawings of the wind turbine structure and stamped engineered drawings of the tower, base, footings, and/or foundation as provided by the manufacturer. Wet stamps shall not be required.
- k. Soil and Geological Studies: Large/Utility Scale wind generation facilities shall require a project-specific soils and geological study confirming that the proposed installation shall be appropriate for the soil and geology of the site.
- l. Compliance with FAA Regulations: No LUS wind generation facility shall be constructed, altered, or maintained so as to project above any of the imaginary airspace surfaces described in FAR Part 77 of the FAA guidance on airspace protection.
- m. Compliance with National Electric Code: Building permit applications for LUS wind generation facility shall be accompanied by a line drawing of the electrical components, as supplied by the manufacturer, in sufficient detail to allow for a determination that the manner of installation conforms to the National Electrical Code.
- n. Utility Notification: In the event that a Large/Utility Scale wind generation facility is not owned and/or operated by an electric utility company, the applicant shall provide evidence the utility company has been informed of the customer's intent to install such a facility.
- o. Electrical Components: Site plans shall detail the location of all above-ground utility lines on the site and all related transformers, power lines, points of interconnection with transmission lines, and other ancillary facilities and structures.

- p. Self-Supporting Structures: All tower structures shall be of monopole construction unless attached to a structurally reinforced roof where such support is not warranted. No lattice structures or towers requiring a guy wire supports shall be permitted.
- q. Safety Shutdown: Each wind turbine shall be equipped with both manual and automatic overspeed controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, furling, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
- r. Abandonment: If a wind turbine is determined to be inoperable the current property owner shall be notified that they must, within six (6) months of receiving the notice, restore their system to operating condition or the property owner shall, at his/her expense, remove the wind turbine and tower for safety reasons. If the owner(s) fails to restore their system to operating condition within the six-month period, the tower then could be defined as a public nuisance and be addressed under the provisions of County Ordinance O-07-28.
- s. Signage: All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with a small wind energy system visible from any public road shall be prohibited.
- t. Lighting: No illumination of the turbine or tower shall be allowed unless required by the FAA. If lighting is to be provided, a lighting plan showing all FAA-required lighting and including a copy of the determination by the FAA to establish required markings and/or lights for the structure(s) shall be provided.
- u. Access: With the exception of facilities constructed in such a way that it is not reasonably practicable to do so, any ladder or other apparatus designed to aid in the climbing of a WECS shall be constructed so that the bottom twelve (12') feet of such ladder or apparatus in not readily accessible except when it is in use by construction, maintenance, repair or other authorized personnel.

## **§7.4 – SIGNS**

### **A. Signs Generally**

Benton County does not regulate the content, design, location, or other criteria related to commercial or private signage except as provided below.

### **B. Commercial, Industrial, or Other Non-Residential Signs**

Signs erected for the purpose of conducting business and not of a strictly residential or agricultural nature shall meet the following requirements:

1. Such signs shall not be located within or extent over the public right-of-way.

2. Such signs shall not be situated within a required parking space, drive aisle, site triangle (as per the definition in Chapter III, §22 – “S” Definitions), or otherwise interfere with ingress/egress or circulation within a site.
3. Such signs shall not be placed within any easement identified for a public or quasi-public purpose such as a drainage easement, utility easement, or access easement.

## §7.5 – TEMPORARY USES

Temporary uses are commercial or public activities that are of a temporary or intermittent scale or duration and are required to be removed following the expiration of a permit. Such uses do not require site plan review approval.

Temporary uses include special events, parades, carnivals, seasonal businesses including Christmas Tree sale, firework stands, pumpkin patch, mazes, public health and safety activities such as emergency clinics and temporary inoculation centers etc.

- A. **Purpose and Scope:** A Temporary Use Permit (TUP) is intended to allow for the short-term placement of activities and any associated structure or improvement that are commercial in nature. Temporary uses are classified as exempt, minor and major based on the nature and impact of the temporary activity.

It is the intent of this regulation:

1. To serve and protect the health, safety and welfare of the general public;
2. To establish equitable standards for temporary uses

- B. **Exemptions:** The following uses shall be exempted from the provisions of this Section if they meet all of the following criteria:

1. The use and/or structure shall not exceed three days in a calendar year ;
2. The use and structure shall be located on private property and shall demonstrate provision of adequate off street parking to serve the use. The temporary use shall not displace the required off-street parking spaces or loading areas of the principal use on-site.
3. The temporary structure shall not exceed 120 square feet in size and shall not accommodate explosives or flammable material .
4. The use and/or structure shall not involve the sale or display of any toxic or hazardous or flammable materials on-site. Examples of exempt temporary uses include but is not limited to the following:
  - Religious or non profit events conducted entirely on a lot occupied by their primary facility.

- Special events and activities conducted on public property, such as school sites and public parks, and public events on private property, such as, public health and safety activities such as emergency clinics and temporary inoculation centers.
- Residential garage and rummage sales
- Revivals or family gatherings.
- Agritourism activities as defined in chapter III of this Ordinance.

C. **Temporary Use Requiring a Permit:** All temporary uses that do not meet the exemption criteria require review and approval by the Planning Board. Examples of minor temporary uses may include but not be limited to:

- outdoor sales display of sales and merchandise sold on the premises of an established business such as sidewalk sales or other temporary commercial promotions provided that such activities use public right-of-way or other area dedicated to a specific site plan purpose such as parking or loading, non mobile or mobile vendor stands such as for seasonal sale of agricultural produce, sports paraphernalia, agricultural tourism activities etc.
- Off site religious events in a tent or other temporary structures
- Real estate offices and model homes within approved development projects
- Contractors' construction yards, trailers, coaches or mobile homes as a Temporary residence during construction of a dwelling
- Explosive materials storage, temporary
- Fairs, festivals, events, and concerts
- Special amusement operations
- Tents and canopies
- Outdoor temporary swap meets or auctions
- Outdoor vending anticipated to have a greater impact such as fireworks stands, large farmers markets, or vehicle/boat events.
- Commercial fireworks displays are considered a temporary use and are required to obtain a Major Temporary Permit.

Applications for TUP must be submitted a minimum of fifteen (15) days prior to the event date. A Temporary Use Permit Application Packet can be downloaded or picked up at the Planning Department during counter hours. Submittals shall require the following information:

1. Completed application and fee

2. Cover letter describing the temporary use including scale and duration
3. Site plan (informal)
4. Supplemental materials and/or approvals based on proposed activity. Note that some uses may be required to obtain permissions from public health and safety agencies such as the Sheriff's Office, Health Department, and Fire Department.

#### **D. Temporary Use Review Procedures**

A TUP may be approved, conditionally approved or denied administratively by designated Planning staff. The staff may refer such initial application to the Planning Board if any criteria classifying proposal as anything other than minor has been determined or some other unique circumstance shall so require. Decisions of staff may be appealed to the Planning Board, pursuant to the provisions of administrative appeals of this Ordinance.

The Planning Board shall hear applications for a Temporary Use Permits as per the following provisions:

1. Procedures. The Board shall hear a request for a a Temporary Use Permit (TUP) in public hearing session. There shall be no separate technical advisory session for aTUP.
2. Findings. The Board may approve, or conditionally approve a Temporary Use Permit application, only when the following findings can be made:
  - a. The proposed temporary use is compatible with the nature, character, and use of the surrounding area.
  - b. The temporary use will not adversely affect the adjacent uses, buildings or structures.
  - c. The nature of the proposed use not detrimental to the health, safety, or welfare of the community or constitutes a nuisance.
  - d. All such uses that involve lights and noises shall not be allowed any closer than 500 feet to a dwelling unit.
  - e. The site shall have access drives so located as to minimize traffic hazards.
  - f. The applicant shall show that adequate measures will be taken to prevent odor, dust, noise, lights, and traffic from becoming a nuisance to uses on other adjacent properties.
  - g. Provision for temporary parking facilities, including vehicular ingress and egress;
  - h. Regulation of nuisance factors such as, but not limited to, prevention of glare or direct illumination on adjacent properties, noise, vibration, smoke, dust, din, odors, gases and heat;
  - i. Regulation of temporary structures and facilities, including placement, height and size, location of equipment and open spaces, including buffer areas and other yards;

- j. Provision for sanitary and medical facilities;
  - k. Provision for solid, hazardous and toxic waste collection and disposal;
  - l. Provision for security and safety measures;
  - m. Location of signs related to location in proximity to public right-of-way;
  - n. Regulation of operating hours and days, including limitation of the duration of the temporary use;
  - o. Provision for a fixed period not to exceed ninety (90) days for a temporary use not occupying a structure, including promotional activities, or one (1) year for all other uses or structures, or for a shorter period of time as determined by the Board;
  - p. The Planning Board may, as applicable, request the submission of a performance bond or other surety devices, to ensure that any temporary facilities or structures used will be removed from the site within a reasonable time following the event and that the property will be restored to its former condition;
  - q. A requirement that the approval of the requested Temporary Use Permit is contingent upon compliance with applicable provisions of this Ordinance;
  - r. Any other conditions which will ensure the operation of the proposed temporary use in an orderly and efficient manner and in accordance with the intent and purpose of this section.
  - s. All TUP's to require a temporary 911 address from the 911 office and require temporary address signage at roadway.
  - t. The applicant shall obtain all related permits and approvals, such as, fire prevention, health and sanitation, police, animal regulations, and business licenses for each temporary use.
  - u. All tents, canopies and other membrane structure shall comply with the Arkansas Fire Code requirements and standards.
  - v. All hazardous materials storage shall comply with Arkansas Fire Code requirements and standards.
3. Revocation. A temporary use permit may be revoked or modified by the Director based on a non-compliance with the provisions of this Ordinance and any conditions of approval.
  4. Display of Permit. Temporary Use Permits shall be prominently displayed at the activity area visible to the general public and to the typical user or customer of the permitted use.
  5. Expiration and Renewal of permit. The terms of the permit shall be determined based on the type of activity. Permits may be permanent renewable or temporary for a specified duration only.



6. Inspection: Inspection shall be requested from the permit applicant. The inspection must be requested at least 24 hours in advance. At the time of the inspection, all fire extinguishers, exit signs, lighting, and any other equipment will need to be installed. All fire extinguishers shall be fully charged and tagged by an authorized State of Arkansas fire extinguishing company and placed at accessible locations near the exits. No extinguisher is to be obstructed in anyway which will prevent it from being easy accessed in the event of a fire. Fire Extinguisher number and type will need to comply with item #3 of the Interior Requirements. Exits are to be provided in accordance with item #2 with exit signs being provided in accordance with item #3 of the Structure Requirements.

## **§7.6 – HOME AND RURAL FAMILY OCCUPATION**

**Home and Rural Family Occupation:** Any use conducted entirely within a dwelling or an accessory building which is clearly incidental and secondary to the use of the dwelling and which does not change the residential character of the building and the surrounding area is classified as a Home Occupation. These regulations do not supersede the existing covenants in a subdivision.

In rural areas of the County with lot sizes of 2 acres or more, an accessory use that allows the operation of a business on the same property as one's residence is also classified as Home and Rural Family Occupation. This includes commercial/ farm related activities conducted in accessory building(s) which are incidental to the prime use of the property for a dwelling or a farm and does not change the rural and or agricultural character of the area.

### **A. Exempt Home and Rural Family Occupations- Allowed by right**

Home and Rural Family Occupations that meet all of the following criteria are exempt from review:

- Operate entirely within the dwelling or an accessory building with no more than twenty-five (25%) percent of the gross floor area of the home and or any accessory building utilized in the day to day operations of the home based business.
- Home and Rural Family Occupations shall be operated and conducted primarily by the resident owner of the property.
- Phone order, fax and or internet sales or sale of items that is clearly incidental to the farm activities or residential use of the site by the property owner.
- Any commercial activity that shall be incidental to residential or farm activities and shall not meet the threshold for site plan review.
- Any use that does not require a building code or septic upgrades (i.e. from residential standards to commercial standards) to accommodate the home and rural family occupation.
- The home and rural family occupation does not display merchandise or have outside storage of equipment or materials visible from a public road or adjacent residence. If located outside the building such use shall be adequately setback and appropriately screened from adjacent properties.

- The home and rural family occupation does not alter the external appearance of the dwelling unit or accessory structure and maintains the rural residential character.
- The home and rural family occupation does not create noise, vibration, glare, fumes, electromagnetic interference, odors, or air and water pollution or any environmental concerns outside the dwelling unit or accessory building on site.
- The home and rural family occupation does not involve the storage of hazardous materials, other than substances of a type and quantity customarily associated with a home or hobby. Further, the use of buildings or structures for the home occupation shall not involve the manufacturing, processing, generation or storage of materials that constitute a high fire, explosion or health hazard as defined by the International Building Code.
- When located in a subdivision, the home occupation has no more than one non-illuminated business sign on the premises, not more than two square feet in area. In rural areas with lot sizes of 1 acres or more, one non-illuminated sign of nine square feet in area and six feet tall may be allowed.
- The home and rural family occupation shall not warrant delivery or parking needs that have the potential to adversely affect traffic for adjacent and surrounding properties. Further, parking areas for residents, employees or customers and or loading areas shall be located on site, adequately setback and appropriately screened from adjacent properties. In subdivisions, parking of non-motorized vehicles shall not be allowed unless adequately screened.

Examples of exempt home based occupations include, however, is not limited to, child care of no more than five children; incidental sales, i.e. independent consultants such as Mary Kay, Tupperware, Pampered Chef etc.; home office, i.e. general contractor; accountant, insurance agent; beauty salon (one chair); apparel alterations; repair shop.

In rural areas with lot sizes of 2 acres or more this may include but is not limited to, small repair or welding shop; cabinet making; horticultural specialists; septic tank repair services and other farm related commercial service, such as, sale of agricultural and or horticultural products, such as, selling honey, eggs, seasonal vegetables and fruits; welding or repair shops; selling fire wood; raising and breeding specialty/farm animals for seasonal sale on the property not to exceed 4 times a year on weekends only; resale of farm equipment on-site, estate sales and others that do not create any environmental or traffic problems for the surrounding area.

Examples of non-exempt home occupation include, however, is not limited to, bed and breakfast; kennels; towing services; auto wreckers; junkyards; restaurants, medical clinic, dentist office, commercial sales or leasing of vehicles, any use that requires a building code or septic upgrades (i.e. from residential standards to commercial standards) to accommodate the home occupation, commercial child care facilities, flea markets, animal auctions, and others that meet the threshold for site plan review.

## §7.7 – ADULT ORIENTED BUSINESSES

The purpose of this section is to establish requirements governing the location of adult-oriented businesses in order to protect the public health, safety, and welfare and to prevent criminal activity consistent with A.C.A §14-1-301.

Based on evidence of the adverse secondary effects of adult-oriented businesses and on findings discussed in cases, including *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), *Erie v. PAP's A.M.*, 529 U.S. 277 (2000), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), and *Young v. American Mini Theatres*, 427 U.S. 50 (1976), the General Assembly finds that:

1. Adult-oriented businesses, as a category of commercial land uses, are associated with a wide variety of adverse secondary effects, including a negative impact on surrounding properties, personal and property crime, illicit drug use and trafficking, lewdness, prostitution, potential spread of disease, and sexual assault;
2. Adult-oriented businesses should be separated from schools, playgrounds, places of worship, and other places frequented by children to minimize the impact of the secondary effects of the adult-oriented businesses on schools, playgrounds, places of worship, and other places frequented by children;

A. **DEFINITIONS-** As used in this section:

"Adult arcade" means any place where the public is permitted or invited and where a still or motion picture machine, projector, or other image-producing device is:

- a) Coin-operated or slug-operated or electronically, electrically, or mechanically controlled; and
- b) Maintained to show an image or images involving a specific sexual activity or a specific anatomical area to a person in a booth or viewing room;

"Adult bookstore or video store" means a commercial establishment that offers for sale or rent any of the following as one (1) of its principal business purposes:

- a) A book, magazine, periodical or other printed matter, photograph, film, motion picture, videocassette, reproduction, slide, or other visual representation that depicts or describes a specific sexual activity; or
- b) An instrument, a device, or paraphernalia that is designed for use in connection with a specific sexual activity;

"Adult cabaret" means any nightclub, bar, restaurant, or other similar commercial establishment that regularly features a:

- a) Person who appears in a state of nudity or who is seminude;
- b) Live performance that is characterized by the exposure of a specific anatomical area or a specific sexual activity; or

- c) Film, motion picture, videocassette, slide, or other photographic reproduction that is characterized by the depiction or description of a specific sexual activity or a specific anatomical area;

"Adult live entertainment establishment" means an establishment that features either a:

- a) Person who appears in a state of nudity; or
- b) Live performance that is characterized by the exposure of a specific anatomical area or a specific sexual activity;

"Adult motion picture theater" means a commercial establishment in which for any form of consideration a film, motion picture, videocassette, slide, or other similar photographic reproduction characterized by the depiction or description of a specific sexual activity or a specific anatomical area is predominantly shown;

"Adult-oriented business" means an adult arcade, an adult bookstore or video store, an adult cabaret, an adult live entertainment establishment, an adult motion picture theater, an adult theater, a massage establishment that offers adult services, an escort agency, or a nude model studio;

"Adult theater" means a theater, a concert hall, an auditorium, or a similar commercial establishment that predominantly features a person who appears in a state of nudity or who engages in a live performance that is characterized by the exposure of a specific anatomical area or a specific sexual activity;

"Child care facility" means a facility that is licensed by the Division of Child Care and Early Childhood Education of the Department of Human Services to provide care or supervision for minor children;

"Escort" means a person who:

- c) For consideration agrees or offers to act as a date for another person; or
- d) Agrees or offers to privately model lingerie or to privately perform a striptease for another person;

"Escort agency" means a person or business association that furnishes, offers to furnish, or advertises the furnishing of an escort as one (1) of its primary business purposes for any fee, tip, or other consideration;

"Local unit of government" means a city of the first class, a city of the second class, an incorporated town, or a county;

"Massage establishment that offers adult services" means an establishment that offers massage services characterized by an emphasis on a specific sexual activity or a specific anatomical area;

"Nude", "nudity", or "state of nudity" means any of the following:

- e) The appearance of a human anus, human genitals, or a female breast below a point immediately above the top of the areola; or
- f) A state of dress that fails to opaquely cover a human anus, human genitals, or a female breast below a point immediately above the top of the areola;

(A) "Nude model studio" means a place where a person who appears in a state of nudity or who displays a specific anatomical area is observed, sketched, drawn, painted, sculptured, photographed, or otherwise depicted by another person for money or other consideration.

(B) "Nude model studio" does not include a proprietary school that is licensed by this state, a college, community college, or university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college, community college, or university that is supported entirely or in part by taxation, or a structure containing an establishment to which the following apply:

- (i) A sign is not visible from the exterior of the structure and no other advertising appears indicating that a nude person is available for viewing;
- (ii) A person must enroll at least three (3) days in advance of a class in order to participate; and
- (iii) No more than one (1) nude or seminude model is on the premises at a time;

"Park" means any area primarily intended for recreational use that is dedicated or designated by any federal, state, or local unit of government, local agency or entity, or any private individual, business, or group including any land leased, reserved, or held open to the public for use as a park;

"Place of worship" means a structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural features;

"Playground" means any:

- i. Public park or outdoor recreational area with play equipment installed and designed to be used by children; and
- ii. Outdoor recreational area with play equipment installed that is owned and operated by a charitable organization or a business;

"Public library" means:

- a. A city library established under § 13-2-501 et seq.;

- b. A county library established under § 13-2-401 et seq.;
- c. A joint city-county library established under § 13-2-401 et seq. or § 13-2-501 et seq.; and
- d. Any other library system established under § 13-2-401 et seq., § 13-2-501 et seq., or § 13-2-901 et seq.;

"Recreational area or facility" means an area or facility open to the public for recreational purposes;

"Residence" means a permanent dwelling place;

"School" means a public or private elementary, secondary, charter, or postsecondary school;

"Seminude" means a state of dress for which clothing covers no more than the genitals, the pubic region, and a female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices;

"Specific anatomical area" means any of the following:

- (A) A human anus, genitals, pubic region, or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered; or
- (B) Male genitals in a discernibly turgid state if less than completely and opaquely covered;

"Specific sexual activity" means any of the following:

- (A) A sex act, actual or simulated, including an act of human masturbation, sexual intercourse, oral copulation, or sodomy; or
- (B) Fondling or other erotic touching of a human genital, a pubic region, a buttock, an anus, or a female breast; and

"Walking trail" means a pedestrian trail or path primarily used for walking but also for cycling or other activities.

#### B. Location of adult-oriented businesses

(a) An adult-oriented business shall not be located within one thousand feet (1,000') of a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.

(b) For the purposes of this section, the measurement required in subsection (a) of this section shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult-oriented business to the nearest point on the property line of a parcel containing a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail.

(c) An adult-oriented business lawfully operating in conformity with this section is not in violation of this section if a child care facility, park, place of worship, playground, public library, recreational area or facility, residence, school, or walking trail subsequently locates within one thousand feet (1,000') of the adult-oriented business.

C. Civil action. If there is reason to believe that a violation of this chapter is being committed:

- (1) The county attorney shall maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or where the violation is occurring from directly or indirectly committing or permitting the violation; or
- (2) A citizen of this state who resides in the County, may in the citizen's own name maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or where the violation is occurring from directly or indirectly committing or permitting the violation.

D. Criminal penalties.

- (a) A violation of this chapter is a Class A misdemeanor.
- (2) Each day of violation constitutes a separate offense.
- (b) A person violating this chapter is subject to a fine under A.C.A § 5-4-201 et seq. and a sentence of imprisonment under A.C.A § 5-4-401 et seq.

#### **§ 7.8 RETAIL LIQUOR ESTABLISHMENTS**

A. Applicability - these regulations apply to all retail liquor establishments that have been granted a retail liquor sale permit by the Alcoholic Beverage Control Board of Arkansas.

Applicants for and holders of permits and other persons shall conform to the regulations set forth in A.C.A. Title 3 (A.C.A. §3-1-101 et seq.), rules and regulations of Arkansas Department of Finance and Administration and to the provisions of this ordinance.

B. Definitions. As used in this ordinance, unless the context otherwise requires:

**"Alcoholic Beverages"** means all intoxicating liquors of any sort other than beer and wine.

**"Block"** means the area on both sides of that portion of a street lying between intersecting streets and extending back, on both sides, halfway to the next parallel street;

**"Dispensary"** means any store which, under the provisions of this act and having paid all taxes required

by the state, sells at retail, in unbroken packages, for consumption off the premises, any intoxicating alcoholic liquor as defined by this act;

**"Malt"** means liquor brewed from the fermented juices of grain and containing more than five percent (5%) of alcohol by weight; or Beer containing not more than five percent (5%) of alcohol by weight and all other malt beverages containing not more than five percent (5%) of alcohol by weight are not defined as malt liquors and are excepted from each and every provision of this act;

**"Manufacturer"** means any person engaged in the business of distilling, brewing, making, blending, rectifying, or producing for sale in wholesale quantities alcoholic liquors of any kind including whiskey, brandy, cordials, liquors, ales, beers, or other liquids containing alcohol, except wines;

**"Person"** means any and all corporations, partnerships, associations, or individuals;

**"Spirituous"** means liquor distilled from the fermented juices of grain, fruits, or vegetables and containing more than twenty-one percent (21%) of alcohol by weight, or any other liquids containing more than twenty-one percent (21%) of alcohol by weight;

**"Vinous"** means the fermented juices of fruits, except native wine, containing more than five percent (5%) and not more than twenty-one percent (21%) of alcohol by weight.

**Bar, Lounge or Tavern** means an establishment, the primary activity of which is the sale and consumption on the premises of beer, wine or other liquors, and where food service is secondary to the sale of liquors. Includes microbreweries where patrons are served beer products on the premises for on-site consumption.

**"Controlled Beverages"** means all beverages of any kind subject to regulation under any alcoholic beverage control law of the State of Arkansas.

**"Club"** means a private club. See Private Club.

**Light Wine** means the fermented juices of grapes, berries, or fruits and any other mixture containing the fermented juices of grapes, berries, or fruits, having an alcoholic content of between one-half of one percent (0.5%) and five percent (5%) alcohol by weight.

**"Native Beverage"** means brandy manufactured in the State of Arkansas from the juices of grapes, berries and other fruits or vegetables grown in the State of Arkansas. (Amended 8-15-07).

**"On Premises Wine Restaurant or Café"** means a place of business serving food to the public prepared for consumption on the premises and an established eating place. The principal business at such restaurant or café shall be the serving of food for consumption on the premises. A drive-in food service establishment shall not be considered a café or a restaurant for purposes of this Section. (Amended 8-20-97).

**"Permit"** means any authorization issued pursuant to any alcoholic beverage control law of the State of Arkansas whether described by law or regulation as a permit, license or otherwise.



**“Permittee”** means the person to whom the permit to do business is issued.

**“Person”** means any natural person, partnership, association, corporation, syndicate, or company.

**“Premises”** means any place, building, or structure, which is shown on a floor plan or site plan submitted to and approved by the Alcoholic Beverage Control Division for the sale or consumption of alcoholic beverages. (Amended 8-19-93)

**Retail liquor** establishment is any establishment permitted by the Alcoholic Beverage Control Board of Arkansas to sell for offsite consumption spirituous, vinous, or malt liquor.

**“Private Club”** means a non-profit corporation organized and existing under the laws of the State of Arkansas, no part of the net revenues of which shall inure directly or indirectly to the benefit of any of its members or any other individual, except for the payment of bona fide expenses of the club’s operation, having not less than 100 members, conducted for some common recreational, social, patriotic, political, national, benevolent, athletic, community hospitality, professional association, entertainment, or other non-profit objective or purpose other than the consumption of alcoholic beverages, which shall have been in existence for a period of not less than one (1) year before application for permit, and owning or leasing a building or space therein for the reasonable comfort and accommodation of its members and their families and guests and, in dry areas, restricting the use of the club facilities to such persons. (Amended 8-17-05)

All other words used in this ordinance shall be defined according to the statutes in such case made and provided, if any, and otherwise shall be defined according to the custom and usage of the people of Arkansas.

#### **C. Location of retail Liquor businesses**

**Separation requirement-** All retail liquor establishment shall not be located within one thousand feet (1,000’), measured wall to wall as straight line in all directions, without regard to intervening structures or objects, from the nearest wall of a building containing the alcohol sale establishment to the nearest wall of the following buildings/ structures :

1. place of worship,
2. school

**Hours of sale-** it shall be unlawful for the owner, operator or any employee of an alcohol sale establishment as defined herewith, to serve or permit the consumption of any controlled beverages at any time prohibited by State and County law.

**Exterior Sign-** All alcohol sales establishments shall comply with the rules and regulations outlined in the Arkansas Department of Finance and Administration and the exterior advertising shall be limited to a non-illuminated sign;

#### **D. Violations**

Violation of the state laws adopted by this section shall subject the offender, upon conviction, to the penalties prescribed by state law. It shall be unlawful for any person to engage in the business of manufacturing, transporting, storing, handling, receiving, distributing, selling, or dispensing, either at wholesale or retail, any controlled beverage, within Benton County without the appropriate permit issued by the Division of Alcoholic Beverage Control of the State of Arkansas.

In addition penalties consistent with Benton County Code of Ordinance, Section 1-9 shall also apply.

## **§7.9 SPORT SHOOTING RANGES AND SPORTS FACILITIES**

The purpose of this ordinance is to regulate the location and construction of shooting range or sports facilities. Such recreational and training complexes, due to their potential safety concerns require stand

### **A. Exceptions**

- I. A sport shooting range or sports facility that is not in violation of a state law or an ordinance of a local unit of government prior to the enactment of this ordinance may continue to operate even if, at or after the time of enactment of this ordinance, the operation is not in compliance with this ordinance.
- II. a sport shooting range or sports facility that is in existence on August 12, 2005, may undertake the following within its existing geographic boundaries:
  - a. Repairing, remodeling, or reinforcing any building or improvement as may be necessary in the interest of public safety or to secure the continued use of the building or improvement;
  - b. Reconstructing, repairing, rebuilding, or resuming the use of a facility or building damaged by fire, collapse, explosion, act of nature, or act of war occurring after August 12, 2005. The reconstruction, repair, or rebuilding shall be completed within one (1) year following the date of the damage or settlement of any property damage claim. If reconstruction, repair, or rebuilding is not completed within one (1) year, the reconstruction, repair, or rebuilding may be terminated;
  - c. Expanding or enhancing its membership or opportunities for public participation; or
  - d. Reasonably expanding or increasing facilities or activities.

### **B. Definitions.** As used in this section:

**Ambient Noise:** The totality of noise in a given place and time. it is usually a composite of sounds from varying sources at varying distances.

**Baffle:** A shielding structure or series of partitions which reduces noise by lengthening the path of sound transmission between source and receiver.

**Decibel (db):** In layman's terms, the unit used to measure the relative loudness or level of a sound. The range of human hearing is from about 0 decibels to about 140 decibels.

**Firearm:** A weapon, including pistols, rifles, and shotguns, capable of firing a projectile using an explosive charge as a propellant.

**Firing line:** A line parallel to a target from which firearms or arrows are discharged.

**Impulsive Sound:** Noise with an abrupt onset, high intensity, short duration typically less than one second and often rapid changing spectral composition.

**Inverse Square law:** The law describing the situation in which the mean square sound pressure changes in inverse proportion to the square of the distance from the source. Under this condition the sound pressure level decreases six decibels for each doubling of the distance from the source.

**L(eq) energy equivalent sound level (Leq):** is a measure which describes with a single number the sound level of a fluctuating noise environment over a time period. It is a sound level based on the arithmetic average energy content of the sound.

**L(dn):** is the Leq(energy averaged sound level) over a 24-hour period. It is adjusted to include a 10db penalty for noise occurring during the nighttime hours (10pm to 7am). Weight is given to nighttime noise in this way to account for the lower tolerance of people to noise at night.

**Noise:** Any unwanted sound, and by extension, any unwanted disturbance within the frequency band.

**Noise level reduction:** The amount of noise level reduction achieved through the incorporation of noise attenuation in the design and construction of the structure.

**Person:** Any individual, corporation, association, club, firm, or partnership.

**Reflection:** the throwing back of an image, of the original sound, by the surface.

**Refraction:** the bending of a sound wave from its original path, either because of passing from one medium to another or because (in air) of a temperature or wind gradient.

**Safety fan:** An area on a shooting range facility designed to contain all projectiles fired from a shooting range.

**Sound Level:** the weighted sound pressure level obtained by use of a sound level meter having standard frequency- filter for attenuating part of the sound spectrum.

**Sound Level meter:** An instrument comprising of a microphone, an amplifier, an output meter and frequency-weighted networks. Sound level meters are used for the measurement of noise and sound levels in a specific manner.

**Shielding:** attenuating the sound by placing walls, buildings or other barriers between the sound source and the receiver.

**Shooting range facility:** A public or private facility, including individual shooting ranges, safety fans or shotfall zones, structures, parking areas, and other associated improvements, designed for the purpose

of providing a place for the discharge of various types of firearms or the practice of archery. Does not include incidental target practice areas on private property.

**Shooting station:** A fixed point from which firearms or arrows are discharged.

**Shotfall zone:** An area within which the shot or pellets contained in a shotgun shell typically fall.

**Sport shooting range** means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting. It includes an area designed and improved to encompass shooting stations or firing lines, target areas, berms and baffles, and other related components.

**Sports facility** means a baseball field, basketball court, gymnasium, golf course, soccer field, swimming pool, tennis court, or other facility for recreational sports. Sports facility does not include a facility for go-carts, motorcycles, motor vehicles, or other motorized conveyances

**Structure:** A walled and roofed building that is principally above ground; a manufactured or mobile home; a storage tank for gases or liquids; or any other permanent, manmade facilities.

#### **§7.9.1 – Location of Shooting ranges and sports facilities**

**Distance from occupied dwelling.** All shooting stations shall be located at least one-half (1/2) Mile (two thousand six hundred and forty feet) from any existing, occupied dwelling.

**Setbacks.** all shooting stations on a range facility shall be located a minimum of two hundred (200) feet from any property line.

#### **§7.9.2 – Operational Requirements for outdoor shooting ranges**

*Hours of operation.* Shooting ranges shall be allowed to operate between sunrise and sunset, except that the hours may be extended after sunset for purposes of subdued-lighting certification of law enforcement officers, or may be extended for other purposes only when a permit allowing such activity is issued in advance by the Sheriff's Department.

On Sundays, shooting shall not commence before 12:30 p.m., unless a permit allowing such activity is issued in advance by the Sheriff's Department.

#### **§7.9.3 – Construction and Design Standards**

Construction and design of a shooting range and sports facility shall be based on proven engineering practices. The type of shooting range, i.e. indoor or outdoor facility and the intended use of the facility for training or competitive activities and use by members only or open to the public will have an impact on the design of the facility including the size and the required safety measures.

The applicant shall demonstrate that the construction and design standards comply with the National rifle association (NRA) guidelines or similar accredited guidelines by the department of Energy, USEPA or others. To operate an outdoor range that is environmentally protective requires implementing an integrated lead management program with appropriate BMPs.

##### **§7.9.3.1- Environmental Assessment**

An environmental assessment of the site shall be submitted that is certified by a registered professional engineer in Arkansas confirming that the proposed sports shooting range and sports facility does not have any adverse environmental impact on the environment and that the project will not negatively impact land and water features, wetland areas, plant and animal life in the area. The environmental assessment shall also require a sound study to identify the ambient sound level, which exists in the area without the range and how the sounds of gunfire will affect the neighboring communities and how the proposed gun range will fit into the surrounding area.

If the environmental assessment is performed incorrectly or identifies any significant adverse impacts on the environment, a complete Environmental impact statement (EIS) may be required.

#### **§7.9.3.2-Site Selection**

The applicant shall submit a written description of the process of site selection and its suitability for the type of shooting activity on-site. The land area selected for the proposed development shall be large enough to accommodate the facilities required for the ranges, and shall not exceed a three percent grade differential at the location of the ranges and shall exhibit the highest margin of safety. Residential areas within ½ a mile radius shall be identified on the Vicinity map. Detailed information on sections or contours, grading cur and fills, interior details of walls, floors, footing, berms, and roofs are required to be provided.

#### **§7.9.3.3-Design Specification**

Design specifications for a shooting range must be based on factors governing the safety of:

- A. personnel who use the facility
- B. property surrounding the facility
- C. inhabitants of the immediate area

Design specifications shall include detail drawings and written requirements for a specific use. For example, target butts for high power rifle ranges require specifications on concrete retaining walls, target carriers, underground electrical and phone lines.

Indoor ranges must be housed in a building furnished with electricity and built of impenetrable walls, floor and ceiling. All federal, state or local statutes and regulations must be complied with. Specifications on building materials require an independent set of plans, detailing such specific requirements as grade of concrete used in walls, floors or walkways, steel reinforcing ceiling materials, treated lumber, doors, joist, roof pitch, roofing materials, dimensions, backstop steel etc.

The applicant shall provide a written description noting all the relevant design features and specifications incorporated in the shooting range design. Supplemental documents/drawings may be required based on the type of proposed activity on-site.

#### **§7.9.3.4-Projectile Containment**

Projectile containment will vary in size and design based upon terrain features, range structures, and the chosen shooting activity. Range enhancements may be used for bullet containment to the confined of a

specific property boundary, such as, backstops, side berms and sidewalls, baffles, target placement, mountains or rolling hills, sloping floor of the range.

**§7.9.3.4.1-Backstop-** The backstop provides a primary impact area for the bullets after being fired at the targets, keeping them from leaving the range under normal conditions. In accordance with the NRA Sourcebook, the backstop embankment shall be compacted to 95 percent minimum laboratory dry density. The range side (side facing the shooter) slope must be as steep as possible but not less than 45 degrees or a ratio of 1-to-1. However, depending on solid conditions a 1.5 to 1 slope may be all that is obtainable. Under these circumstances depending on what is located in the down range area, additional range features such as bullet catchers may be required to be installed.

A natural hill that has the required height and slope may be used as a backstop. A horizontal bullet catcher at the top of the backstop may be required in some cases.

**§7.9.3.4.2-Side berms and Walls-** protective barriers may include earthen berms, precast panels, wooden cribs, poured concrete walls or panels. Their use depends on the available space, the type of range and relative cost.

**§7.9.3.4.3- Safety Baffles-** are structures used to restrict bullets to a smaller area than would be possible without them. The basic concept is based on a 'A blue sky gap', meaning that baffles are set up so that the shooter, regardless of shooting position, cannot see any blue sky down range. These fixtures may be overhead, on the ground, on top of the backstop, in the roof of a firing line of cover, in the form of an elongated box or as a completely enclosed tunnel. The principle behind the design is to equip a range with baffles so that a bullet can leave its confines but will fall to earth within a smaller, more predictable area.

#### **§7.9.3.5-Landscaping**

Adequate landscaping and other design measures may be used to separate different use areas, such as range facilities from the office areas and surrounding sensitive land uses. Native landscaping shall be selected to inhibit erosion, aesthetic appeal, and natural landscape of the site. In situation where berms are proposed on-site, these berms should be hydro-seeded with native grasses during required to reduce the noise transmission from such facilities.

#### **§7.9.3.6-Sound Abatement**

As a general guide, the following categories developed by NRA based on field and text book work is suggested:

- A. Unacceptable: if the sound level exceeds 90dba for 1 hour out of 24 or exceeds 85 dBA for 8 hours out of 24 and the receiver is less than ¼ mile from the sound source.
- B. Discretionary: Normally acceptable, if the level exceeds 80dba for 8 hours out of 24 or if there are "loud" impulsive sounds (referring to sonic booms, artillery, etc.) on site and the distance from the property boundary and the receiver is one mile or more.
- C. Discretionary: Normally acceptable, if the level does not exceed 75dba for 6 hours out of 24 and the distance from the property boundary and the receiver is over 2 mile.
- D. Acceptable: if the sound levels at the receiver do not exceed 65dba for more than 8 hours out of 24 or activities do not extend into the nighttime hours of 10pm through 7am.

In certain instances, the applicant may be required to provide noise measurements in accordance with NRA guidelines. Suitable noise attenuation measure and design features may be used to significantly reduce sound levels, such as, blocking line of sight, propagation paths, or the direct path from the firearms to the receiver, bending of sound waves, and reflection of sound waves. The most common type of sound abatement used on shooting ranges is barriers, berms or walls.

- Firing line covers- may vary in height from 7-15 feet. Wood and shingles is desirable. To achieve higher acoustical benefits, insulation may be added to the walls and ceiling of the firing line cover.
- Barrier, berm, or wall- to eliminate the direct source-to-receiver, construct a barrier from the back wall forward 10-20 feet beyond the firing line, or long enough to block the line of sight from the other end of the firing line to the concerned receiver. These barrier walls should be coupled to the firing line cover, if possible.
- Landscaping is another option for sound control. Based on studies by Cook and Haverbeke (Tree and Shrubs for noise abatement: Nebraska Agricultural Experimental Station Research Bulletin/#246, July 1971, CN: DNAL 100-N27-(3), 65-100 foot wide stands of dense trees and shrubs are needed to reduce noise. For optimum results, the trees should be close to the source as opposed to the receiver. Trees with uniform vertical foliage, should be planted as close as possible to form a continuous, dense barrier. Sparsely planted trees offer little resistance. Evergreens or deciduous varieties which maintain their leaves are recommended.

#### **§7.9.3.7-Lead and Arsenic Management**

In accordance with the Resource Conservation & Recovery Act (RCRA), indoor and outdoor ranges shall provide written information on the following:

- a. procedures for recycling of lead shots or bullets
- b. procedures for shipment and disposal of lead-contaminated soil, if applicable- this is required if the soil fails the Toxicity Characteristic Leaching Procedure (TCLP) test. Such sites shall comply with RCRA regulations requiring that all generators of facilities that produce hazardous waste obtain an EPA ID# and manifest prior to disposal of hazardous waste products.
- c. significant contamination of the environment that could cause an imminent and substantial endangerment to health or the environment
- d. transportation of the used filters from indoor ranges to the disposal/recycling point

In summary, lead management involves a four step approach:

Step 1- Control and contain lead bullets and bullets fragments

Step 2- Prevent migration of lead to the subsurface and surrounding surface water bodies

Step 3-Remove the lead from the range and recycle

Step 4-Documenting activities and keeping records

An effective lead management program requires implementing and evaluating BMPs from each step identified above and illustrated in the table below.

#### **§7.10 – RESERVED**